

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #2 Residential Care Facilities for the Elderly (RCFE) - Regulation Clean-Up

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held March 13, 2002, as follows:

March 13, 2002
Office Building # 9
744 P Street, Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The CDSS will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify CDSS at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by telefax to the address/number listed below. All comments must be received by 5:00 p.m. on March 13, 2002.

The CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are also available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which CDSS considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT: Anthony J. Velasquez, Chief, Office of Regulations Development, California Department of Social Services, 744 P Street, MS 7-192, Sacramento, California 95814

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CHAPTERS

Community Care Licensing, Title 22, Division 6, Chapter 1 - General Licensing Requirements, Section 8007 (Exemption From Licensure), Chapter 8 – Residential Care for the Elderly, Section 87101 (Definitions), Section 87102 (Definitions-Forms), Section 87107 (Exemption From Licensure), Section 87114 (Continuation of Licensure Under Emergency Conditions/Sale of Property), Section 87118 (Nondiscrimination), Section 87222 (Plan of Operation), Section 87227.1 (Theft and Loss), Section 87561 (Reporting Requirements), Section 87583.1 (Resident Participation in Decision Making), Section 87585 (Mental Condition), Section 87587 (Reappraisals), Section 87700 (Health and Safety Protection), and Section 87702 (Allowable Health Conditions and the Use of Home Health Agencies); Chapter 8.5 – Residential Care Facilities for the Chronically Ill, Section 87807 (Exemption From Licensure) and Section 87854 (Penalties).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In 1998, the legislature enacted AB 2686, Chapter 945 (Statutes of 1998) which added Health and Safety Code Sections 1505 and 1568.03. In accordance with the provisions of these Health and Safety Code Sections, CDSS is amending Sections 80007, 87107(a)(9), and 87807(a)(6) to exempt from licensure any housing project for elderly or disabled persons, or both, that meets specified federal requirements and where supportive services are made available to residents under certain circumstances.

In 1991, the legislature enacted SB 994, Chapter 888 (Statutes of 1991) which added Health and Safety Code Sections 1569.145(f)(1) and (h). In accordance with the provisions of these Health and Safety Code Sections, CDSS is amending Section 87101(r)(1) to include the definition of “family member”. A “family member” includes all persons previously identified as “relatives” in Residential Care Facilities for the Elderly (RCFE) regulations and additionally includes an unmarried spouse, adopted children, and stepchildren. CDSS is also amending Sections 87101(s) and 87107(a)(7) to exempt from licensure those arrangements where care and supervision are provided by a “family member” to an elderly relative(s).

In 1994, the legislature enacted SB 1558, Chapter 1088 (Statutes of 1994) which added Health and Safety Code Section 1569.193. In accordance with the provisions of this Health and Safety Code Section, CDSS is amending Section 87114 to permit an adult relative or other nonrelated adult who has control of the property, to be designated in advance as the responsible party to continue operation of the facility when a licensee dies, provided certain conditions are met.

The CDSS is amending Section 87118(a) to be consistent with a petition CDSS received pursuant to Government Code Section 11340.6 that Section 87118 of the RCFE regulations be amended to address discrimination against residents in licensed facilities. Section 87118(a) is being amended to ensure that “All licensed facilities shall receive persons on a nondiscriminatory basis according equal treatment and services without regard to race, color, religion, national origin, actual or perceived sexual orientation or ancestry.”

In 1996, the legislature enacted SB 571, Chapter 434 (Statutes of 1996) which added Health and Safety Code Section 1569.316(a). In accordance with the provisions of this Health and Safety Code Section, CDSS is amending Sections 87222(a)(11) and 87575(a)(5) to require the referring agency or facility, or its designee, to provide to the administrator of an RCFE, all information in

its possession concerning any history of dangerous propensity of the client prior to placement in the RCFE.

In 1988, the legislature enacted AB 3624, Chapter 750 (Statutes of 1988) which added Health and Safety Code Sections 1569.152 and 1569.153. In accordance with the provisions of these Health and Safety Code Sections, CDSS is adopting new Section 87227.1 to require licensees to establish a theft and loss prevention program and detailed procedures to investigate occurrences of theft and loss.

The CDSS is amending Section 87561(a)(1)(A) to clarify that a licensee must report the death of a resident from any cause "regardless of where the death occurred, including but not limited to a day program, a hospital, enroute to or from a hospital, or visiting away from the facility".

In 1998, the legislature enacted AB 1338, Chapter 578 (Statutes of 1998) which added Health and Safety Code Section 1569.156. In accordance with the provisions of this Health and Safety Code Section, CDSS is amending Sections 87583.1 and 87587 to require RCFEs to inform residents of their right to make decisions concerning their medical care and to formulate advance directives.

In 1998, the legislature enacted AB 2155, Chapter 660 (Statutes of 1998) which added Health and Safety Code Section 1569.80. In accordance with the provisions of Health and Safety Code Section 1569.80, CDSS is amending Section 87583.1 to permit an RCFE resident, or the resident's representative, or both to participate in decisionmaking regarding the care and services to the resident. In 1999, the legislature enacted AB 1433, Chapter 411 (Statutes of 1999) which added Business and Professions Code Section 680. In accordance with the provisions of this Business and Professions Code Section, CDSS is amending Section 87700 to require licensed health care practitioners to disclose their credentials on a name tag while working in an RCFE.

In 1997, the legislature enacted SB 1231, Chapter 494 (Statutes of 1997) which added Health and Safety Code Section 1569.725. In accordance with the provisions of this Health and Safety Code Section, CDSS is adopting new Sections 87702(b) and (c) specifying that an RCFE may provide incidental medical care to its residents through a home health agency (HHA) when the licensee meets specified conditions. The facility must have the ability to provide the needed supporting care and supervision; the licensee must advise the HHA of the RCFE regulations; the RCFE and HHA must complete a protocol regarding the responsibility of each party; the HHA must provide ongoing communication about the frequency and duration of the services it provides.

COST ESTIMATE

1. Costs or Savings to State Agencies: None
2. Costs to Local Agencies or School Districts: None
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: None

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that the proposed regulations will affect small businesses.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in Health and Safety Code Sections 1530, 1531, 1562.3(i), and 1569.30; Welfare and Institutions Code Sections 15763(a), 15763(a)(2), and 15763(d). Subject regulations implement and make specific Health and Safety Code Sections 1505, 1568.03, 1569.80, 1569.145, 1569.152, 1569.153, 1569.154, 1569.156, 1569.191, 1569.193, 1569.316, 1569.725, and Business and Professions Code Section 680.

CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person: Anthony J. Velasquez (916) 657-2586
Backup: Steve Smalley (916) 657-2587

CDSS REPRESENTATIVE REGARDING SUBSTANCE OF THE PROPOSED REGULATION

Program Contact: Barbara Baker (916) 322-3178
Backup: Joan Regeleski (916) 324-3058

AGENDA ITEM(S) FOR THESE PUBLIC HEARINGS - March 13, 2002

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| ITEM #1 | ORD # 0601-13 | Refugee Cash Assistance (RCA)/Entrant Cash Assistance (ECA) Amendments |
| ITEM #2 | ORD # 0401-07 | Residential Care Facilities for the Elderly (RCFE) Regulations cleanup |